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REMARKS

Applicant has amended claims 1-8 and the specification. Applicant respectfully submits that these amendments to the claims and specification are supported by the application as originally filed and do not contain any new matter. Accordingly, the Office Action will be discussed in terms of the specification and claims as amended.

Firstly, the Examiner states that the IDS filed February 5, 2004 fails to comply with 37 CFR 1.98(a)(2) which requires a legible copy of each cited foreign document, stating that JP H10-501976 is provided, but lacks an English translation of the specification or abstract and JP 2001-128879 is also provided but lacks an English translation of the specification and only includes an English language abstract.

In reply thereto, Applicant respectfully submits that Applicant has complied with the requirements of 37 CFR 1.98. In particular, Applicant respectfully submits that 37 CFR 1.98(a)(2) only requires that Applicant submit a legible copy and states nothing concerning translation. Instead, Applicant directs the Examiner's attention to 37 CFR 1.98(3)(ii) wherein it requires an English translation of the non-English document or portion thereof if it is within the possession, custody, or control of the entity making the IDS. Applicant has no such translations except that which has already been provided to the Examiner and respectfully submits that Applicant has complied with the requirements of 37 CFR 1.98 and respectfully requests that the contents of Applicant's IDS filed February 5, 2004 be considered by the Examiner.

The Examiner has objected to the disclosure and pointed out certain informalities. Applicant has amended the disclosure where indicated and respectfully requests that the Examiner withdraw his objection.

The Examiner has rejected claims 2-8 under 35 USC 112, second paragraph, as being indefinite. Applicant has amended the claims and respectfully submits that claims 2-8 now comply with 35 USC 112, second paragraph.

The Examiner has rejected claims 1-5 and 7-8 under 35 USC 102 as being anticipated by Rossau et al., stating that Rossau et al. discloses each and every element of Applicant's claimed invention.

In reply thereto, Applicant has carefully reviewed Rossau et al. and respectfully submits that Rossau et al. only uses a part of the sequence of 16S, 23S rRNA sequence as a probe. Accordingly, Applicant respectfully submits that the identification of the microorganism in

Rossau et al. is conducted based upon only a part of the sequence. In contrast thereto, in Applicant's invention, the entire 16S and 23S rRNA sequence is used for conducting identification of the microorganism. The way of using the entire sequence as a probe in Applicant's invention provides a high degree of selectivity with a genome DNA hybridization to identify the microorganism and this high selectivity cannot be achieved using the partial sequence of Rossau et al.

In view of the above, therefore, Applicant respectfully submits that Rossau et al. does not disclose each and every element of Applicant's invention as claimed by claims 1-5 and 7-8 and these claims are not anticipated thereby.

The Examiner has further rejected claim 6 under 35 USC 103 as being obvious over Rossau et al. in view of Balch, stating that Rossau et al. teaches all of the present invention except for the identification of the microorganisms from food; Balch teaches a system for monitoring food for microorganisms; and it would have been obvious to one of ordinary skill in the art to modify Rossau et al. in view of Balch in order to create Applicant's invention.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention and Rossau et al. In addition, Applicant has carefully reviewed Balch and respectfully submits that Balch merely discloses a molecular analysis system and not one based on DNA.

In view of the above, therefore, Applicant respectfully submits that the combination of Rossau et al. and Balch is not Applicant's invention as claimed by claim 6 and claim 6 is not obvious thereover.

The Examiner has rejected claim 4 under 35 USC 103 as being obvious over Rossau et al. in view of Carrino et al., stating that Rossau et al. discloses all of the present invention except for the use of an addressable microchip for microorganism detection; Carrino et al. teaches an identification of bacteria species by use of addressable microchip; and it would have been obvious to modify Rossau et al. in view of the teachings of Carrino et al.

In reply thereto, Applicant would like to incorporate by reference his comments above concerning Applicant's invention and Rossau et al. In addition, Applicant has carefully reviewed Carrino et al. and respectfully submits that while Carrino et al. may disclose the use of a microchip, the method and apparatus of Carrino et al. selectively operates on the particular strains that include a specific allele and is an SDA method.

In view of the above, therefore, Applicant respectfully submits that the combination of Carrino et al. and Rossau et al. is not Applicant's invention as claimed by claim 4 and claim 4 is not obvious thereover.

In view of the above, therefore, it is respectfully requested that this Amendment be entered, favorably considered and the case passed to issue.

Please charge any additional costs incurred by or in order to implement this Amendment or required by any requests for extensions of time to KODA & ANDROLIA DEPOSIT ACCOUNT NO. 11-1445.

Respectfully submitted,

KODA & ANDROLIA

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